

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

MARY FRANCE MURPHY,

Respondent.

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Docket No. 13-0021-DB

DEBARRING OFFICIAL'S DETERMINATION

Introduction

By Notice of Proposed Debarment and Continuation of Existing Suspension dated January 03, 2012¹ ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent MARY FRANCE MURPHY of her Proposed Debarment and Continuation of Existing Suspension from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a period of three years from November 10, 2010, the date of her suspension. The Notice further advised Respondent that her proposed debarment was in accordance with the procedures set forth in 2 CFR parts 180 and 2424 and was based upon her guilty plea and conviction for violation of Ohio Revised Code §§ 2913.02 (Theft) and 2913.51 (Receiving Stolen Property).

A telephonic hearing was held on April 23, 2013, before the Debarring Official's Designee, Mortimer F. Coward. Respondent appeared *pro se*. David R. Scruggs, Esq. appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 C.F.R. part 180, to debar Respondent from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a period of three years from the date of her suspension, November 10, 2010. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notice of Proposed Debarment dated January, 03 2013.²
2. A letter from Respondent dated January 28, 2013, addressed to the Debarring Official's Designee, explaining her actions and involvement in the criminal matter and describing her community and religious activities.

¹ The date of the Notice is incorrectly shown as January 03, 2012, instead of as January 03, 2013.

² *Id.*

3. Respondent's submission received April 15, 2013, via FAX in this office along with accompanying exhibits, seeking the dismissal of HUD's proposal to debar her.³
4. An emailed copy of Respondent's submission received April 22, 2013, supplementing her April 15, 2013 submission with several more attachments.
5. The Government's Pre-Hearing Brief in Support of a Three-Year Debarment filed March 22, 2013 (with accompanying exhibits and attachments).

Government Counsel's Arguments

Government counsel states that Respondent along with her coconspirators engaged in a mortgage fraud scheme. As part of the scheme, the conspirators identified properties and arranged for straw buyers recruited by Respondent to receive loans from mortgage lenders to purchase the properties as investment properties. In furtherance of the scheme, Respondent and her coconspirators would obtain fraudulently inflated appraisals. The conspirators then supplied false documents that were used by the borrowers to induce the lenders to make the mortgage loans. Respondent also provided funds needed by the straw buyers for down payments. Respondent and her coconspirators profited from the scheme by misrepresenting that, through their "dummy" businesses, they had provided services to the sellers of the properties for which they should be paid at closing. Counsel also alleges that Respondent arranged for her company, M. Murphy and Murphy, Inc., to be paid for closing services allegedly provided to the seller. Later, as a result of the borrowers' inability to make the mortgage payments, the properties were sold at a loss after foreclosure or through short sales.

In November 2010, Respondent was indicted on 18 counts, and in July 2012, Respondent entered a guilty plea to three felony counts that charged her with theft and receiving stolen property. Counsel adds that, on the basis of the guilty pleas, Respondent admitted she obtained by theft at least \$500,000.00 from three lenders. Additionally, Respondent received between \$5,000.00 and \$100,000.00 that belonged to two lenders even though she knew the money was stolen from the lenders. In October 2012, Respondent was sentenced to two years of probation, 100 hours of community service, and a fine of \$3,000.00, of which \$2,500.00 was suspended.

Counsel argues that, because Respondent was a real estate agent for many years, including the years she participated in the mortgage fraud scheme, she has been a participant or principal in a covered transaction and, by virtue thereof, is subject to the debarment regulations. *See* 2 C.F.R. §§ 180.120(a), 180.980, and 180.995 and 2 C.F.R. § 2424.95(j). Counsel also argues that Respondent's debarment is warranted although Respondent no longer works as a real estate agent, because she may resume working in the real estate or mortgage industry in the future. Counsel further argues that Respondent's criminal conviction for theft and receiving stolen property, crimes specifically listed under 2 C.F.R. § 180.800 provides cause for her debarment pursuant to §§ 180.800(a)(1), (a)(3), and (a)(4). Additionally, counsel notes (citing relevant case law) that Respondent's conviction cannot be challenged in this proceeding, as Respondent is attempting to do.

³ Respondent's submission is captioned "GOVERNMENT PRE-HEARING BRIEF IN SUPPORT OF A THREE-YEAR DEBARMENT" but is actually Respondent's brief.

Counsel reviews the factors under 2 C.F.R. § 180.860 and finds, among other things, as aggravating factors (1) the financial loss suffered by the four lenders and others defrauded by Respondent's scheme; (2) Respondent's planning of the scheme, which was executed over a seven-month period and her continued denial of her responsibility for the wrongdoing for which she was convicted; and (3) Respondent's position and knowledge as a real estate agent which facilitated her participation in the scheme. Counsel concludes that, because of the seriousness of Respondent's wrongdoing, her lack of integrity and present responsibility, and the other matters argued by the government, Respondent should be debarred for three years to protect the public interest and the government.

Respondent's Arguments

Respondent testified that she worked at McDonalds for 30 years before getting into the real estate business in 2005. After she left McDonalds, Respondent testified that she had over \$200,000.00 in her profit sharing account which she used to buy her properties. According to Respondent, she "did no real estate with Kevin and Stubbs."⁴ Respondent added that she did property management for her husband and Tubbs. As Respondent sees it, her "biggest mistake was being associated with ungodly people." Respondent concluded her testimony by asserting that she is "not a liar and not a cheat."

In her written submission, Respondent stated that she purchased four properties under the stated income program of Indy Mac and Countrywide. Because she purchased the four properties under the Stated Income or Reduced Documentation program, she did not have to provide the usual documentation required by a lender of a borrower seeking to purchase property. Respondent's position is that her four properties were purchased with No Income Asset Verification loans that the banks had the discretion to "control or deny," i.e., approve or not. Respondent asserts that there was "no false information produced to the bank. There was no theft."

Respondent also challenges the allegations that the appraisals at issue were inflated. Respondent notes that one of the two properties that were identified in the theft charge laid against her had three appraisals, and the "final appraisal was completed by the Countrywide in which the bank adjusted the value to procure." Respondent also refers to the exhibits attached to her submission which, she asserts, show that the properties at issue were purchased for cash along with proof of the verified accuracy of the four HUD-1's.

Respondent concludes that she "has provided proper documentation to secure [sic] that there was no scheme to defraud or fraudulent documentation for the four properties that were procured." Based on her submission, Respondent requests "the Government to release [her] from debarment."

⁴ Kevin E. Murphy, Respondent's husband, and Benjamin F. Tubbs, her husband's business partner, were indicted along with Respondent for their role in the real estate fraudulent scheme described above.

Findings of Fact

1. Respondent was at all relevant times a licensed real estate agent.
2. Respondent participated in a scheme along with others to purchase four properties.
3. Respondent was indicted along with her husband and other business associates for her role in the scheme.
4. The scheme involved, among other things, the provision of false documents to lenders, inflated appraisals, straw buyers, and claims for payment of services allegedly provided to sellers by Respondent's company.
5. Respondent pleaded guilty and was convicted of theft and receiving stolen property in connection with the scheme.
6. Respondent was sentenced to two years of Community Control, one hundred hours of community service, and fined \$3,000.00 with \$2,500.00 of the fine suspended.
7. HUD suspended Respondent effective November 10, 2010.

Conclusions

1. As a licensed real estate agent at the time of her commission of the acts for which she was convicted, Respondent is a "person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction." See 2 C.F.R. § 180.120(a). See also 2 C.F.R. 180 §§ 180.200, 180.980 and 180.995, and 2 C.F.R. § 2424.995.
2. Respondent's conviction for theft and receiving stolen property provides cause for her debarment pursuant to 2 C.F.R. §§ 180. 800(a)(1) and (3).
3. Respondent's protestations of her innocence and attempts to relitigate her criminal case in this proceeding are of no avail. Similar attempts by other respondents have been dismissed as "not persuasive [because] their admissions of guilt are a matter of record and may be taken at face value [and] the conviction constitutes per se cause for debarment." *In the Matter of Larry W. Smith*, HUDBCA No. 81-620-D32, 1981 HUD BCA Lexis 59 (September 14, 1981). Just as unpersuasive is Respondent's attempt in this forum to challenge the basis for her criminal conviction. Thus, it has been held that a respondent convicted of a criminal offense may not "collaterally attack his conviction in [a debarment] proceeding." *In the Matter of Wayne D. Turner*, HUDBCA No.91-5903-D49, 1993 HUD BCA Lexis 6.
4. The courts have held that debarment is a sanction that may be invoked by HUD as a measure of protecting the public by ensuring only those qualified as "responsible" are allowed to participate in HUD programs. *In re. Buckeye Terminix Co., Inc.*, citing *Stanko Packing Co. v. Bergland*, 489 F. Supp. 947, 949 (D.D.C. 1980) and *Roemer v. Hoffman*, 419 F. Supp. 130, 131 (D.D.C. 1976). "Although the test for debarment is whether [Respondent] is presently responsible, a lack of present responsibility may be inferred from past acts." *Awaya, supra* (citations omitted). See also *In Re Buckeye Terminix Co., Inc.*, HUDALJ 89-1402-DB (August 31, 1990), holding that "Responsibility encompasses the projected risk of a person doing business with HUD. This includes his integrity, honesty, and ability to perform. The primary test for

debarment is present responsibility although a finding of present lack of responsibility can be based upon past acts.”

5. The regulations provide at 2 CFR 180.150 that “[g]iven a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.” In the instant matter, the cause that justifies Respondent’s exclusion is her criminal conviction for theft and receiving stolen property. The regulations at 2 C.F.R. §§ 180.800(a)(1) and (3) specifically state that the commission of these offenses by any person subjects her to debarment.
6. HUD has established a cause for Respondent’s debarment by a preponderance of the evidence based upon Respondent’s criminal conviction. *See* 2 C.F.R. § 180.850.
7. As provided in 2 C.F.R. § 180.845(a), “[t]he debarring official may debar you for any of the reasons in § 180.800. However, the official may not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth in § 180.860.”
8. I have considered the aggravating and mitigating factors as provided in 2 C.F.R. § 180.860 and conclude that the aggravating factors far outweigh the mitigating factors. As aggravating factors, I considered, *inter alia*, the financial harm caused to the lenders and other innocent victims of the fraudulent scheme; the fact that Respondent’s wrongdoing was not limited to a single act nor a very brief period – Respondent’s misconduct involved four lenders and was perpetrated over a seven-month period; Respondent’s assistance in planning the scheme, including her recruitment of straw buyers and her company’s receipt of funds from the proceeds at settlement of the properties; Respondent’s failure to fully accept responsibility for her role in the fraudulent scheme; and the lack of remorse by Respondent for her wrongdoing. As mitigating factors, I considered that Respondent received a fairly light sentence for her criminal wrongdoing; the fact that Respondent may not have been fully aware of the full extent of her husband’s and his business associates’ activities in perfecting the scheme; and Respondent’s community and religious activism.
9. Based on a weighing of the factors recited above, I find that Respondent is not presently responsible and that a period of exclusion is necessary “to protect the public interest.” 2 C.F.R. §§ 180.125(a) and (b). “The duration of a debarment should be the minimum necessary to insure that risk to the government program is minimized by assuring that [participants act] . . . with the highest degree of honesty and integrity. The period should be long enough to demonstrate that the government takes the conduct at issue seriously . . . until [a participant has] had sufficient time to reflect on the cause for their debarment and to conform their conduct to the standard of present responsibility.” *See In re Richard Duane Widler*, HUDALJ 92-1766-DB, 1992 HUDALJ LEXIS 59 (June 18, 1992).
10. Respondent’s actions described here raise grave doubts with respect to her business integrity and personal honesty.
11. HUD has a responsibility to protect the public interest and to take appropriate measures against participants whose actions may affect the integrity of its programs.

12. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 C.F.R. §§ 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of three years from the date of her suspension, November 10, 2010⁵. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 C.F.R. chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: _____

5/30/13



Craig T. Clemmensen
Debarring Official

⁵ The regulation at 2 C.F.R § 180.865(b) provides, in relevant part, "If a suspension has preceded your debarment, the debarring official must consider the time you were suspended."

CERTIFICATE OF SERVICE

I hereby certify that on this 30TH day of May 2013, a true copy of the **DEBARRING OFFICIAL'S DETERMINATION** was served in the manner indicated.



Deborah Valenzuela
Debarment Docket Clerk
Departmental Enforcement Center (Operations)

HAND-CARRIED

Mortimer F. Coward, Esq.
Debarring Official's Designee

David R. Scruggs, Esq.
Melissa B. Silverman, Esq.
Ana I. Fabregas, Esq.
Government Counsel

VIA FIRST CLASS MAIL

Mary France Murphy

